

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2329 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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BHUPENDRA COTTON GINNING FACTORY

Versus

GUJ ELECTRICITY BOARD & OTHERS

Appearance:

MR SD PATEL for Petitioner
MS AP KANSARA for Respondent No. 1
MS BR GAJJAR ASSISTANT GOVERNMENT PLEADER
for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 18/04/2000

ORAL JUDGEMENT

I have heard Mr. S.D.Patel, learned counsel
appearing on behalf of the petitioner and Ms. B.R.Gajjar,
learned Assistant Government Pleader appearing on behalf

of the respondent No.2 -State of Gujarat.

Present writ petition has been filed by M/s Bhupendra Cotton Ginning Factory praying for a direction to the Gujarat Electricity Board for refund of the electricity duty paid against Meter Nos. I-350 and C-350. The Gujarat Electricity Board was realising electricity duty at the rate of 30%. Subsequently by an order dt. 19th July, 1986, the electricity duty has been reduced from 30% to 10% with effect from 11th October, 1983. It is submitted by the learned counsel for the petitioner that the respondent no.1 Gujarat Electricity Board has made the payments to many consumers the excess duty recovered by them. Learned counsel for the petitioner draws my attention to the statement prepared by the Gujarat Electricity Board showing that the petitioner is entitled to get refund of Rs.21,846-26 Ps. against meter No. I-350 because of the reduction of electricity duty from 30% to 10%. Similarly, the respondent no.1 -Gujarat Electricity Board prepared a statement regarding refund against meter No.C-350 at Page 25 of this writ petition. The Junior Engineer, Gujarat Electricity Board calculated that against Meter No. C-350 the petitioner is entitled to get refund of Rs.1,391-66 Ps. Learned Counsel for the petitioner further submitted that the petitioner has applied for refund of the money against both the meters, but the respondent -Gujarat Electricity Board has not refunded the amount as calculated by the Junior Engineer of the respondent no.1 Gujarat Electricity Board. Learned Counsel further submitted that the Gujarat Electricity Board -respondent no.1 informed the petitioner that since the application has been filed beyond the period of limitation, and therefore, the petitioner is not entitled to get refund of the excess electricity duty paid to the respondent no.1. Ms. Gajjar, learned Assistant Government Pleader did not dispute the notification regarding reduction of electricity duty from 30% to 10%. Learned Assistant Government Pleader further submitted that since the application has not been filed within the prescribed time, the payment has not been made to the petitioner.

I do not find any force in the submission made by the learned Assistant Government Pleader because in view of the provisions of Rule 12 of the Bombay Electricity Duties (Gujarat) Rules 1986, a consumer can make an application for refund of excess duty within 12 months from the date of payment of such excess electricity duty. In the instant case, vide notification dated 19th July, 1986, the electricity duty has been reduced from 30% to

10% with effect from 11th October, 1983. Therefore, any person who is entitled to get refund of the excess electricity duty paid to the Gujarat Electricity Board, can make an application within twelve months from 19th July, 1986 i.e. the date on which the notification regarding reduction in electricity duty was published by the respondent Gujarat Electricity Board. The Junior Engineer of the respondent no.1 Gujarat Electricity Board has calculated the amounts of refund by preparing the statement dated 10th November, 1987. The petitioner has filed the application dated 6th April, 1987 for refund of the excess duty paid by the petitioner. It is, therefore, evident that the application for refund of the excess duty from the respondent no.1 is well within the time and there is no reason for the respondent no.1 to deny payment of the excess duty to the petitioner. Consequently, I am of the view that the petitioner is entitled to get refund as calculated by the Junior Engineer of the Gujarat Electricity Board and accordingly, the respondents are directed to refund the excess electricity duty paid by the petitioner during the period from 11th October, 1983 to 26th November, 1986. The respondents are hereby directed to refund Rs.21,846-26 Ps.to the petitioner against Meter No. I-350 and Rs.1,391-66 Ps. against Meter No. C-350 within a period of three months from the receipt of this order. The petitioner may file an application along with copy of this order to the respondent no.1 Gujarat Electricity Board for receiving the payment.

With the above observation and direction, the writ petition is allowed. Rule is made absolute accordingly. In the facts of the case, I make no order as to costs.

Date:18/4/2000. (P.K.SARKAR,J.)

ccshah